



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CITIZENS NATIONAL TRUST AND SAVINGS)
BANK OF LOS ANGELES, TRUSTEE FOR)
HORACE HEIDT)

Appearances:

For Appellant: Vaughn R. Antablin, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax
Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the claims of Citizens National Trust and Savings Bank of Los Angeles, Trustee for Horace Heidt, for refund of personal income tax in the amounts of \$189.77, \$534.09, \$457.14 and \$27.91 for the years ended August 31, 1950, 1951, 1952 and 1953, respectively.

Appellant is a successor trustee under a trust agreement entered into by Horace and Adeline Heidt for the benefit of their children. At the time the agreement was executed there were three beneficiaries; two sons and a daughter. Approximately a year later, another son was born to the trustors and became a beneficiary pursuant to a provision in the trust instrument.

The trust estate is composed of an undivided interest in a Palm Springs hotel. The trust instrument directs the trustee to divide the estate into equal shares for accounting purposes but without any physical separation.

The income from a share assigned to a particular beneficiary is to be accumulated until he reaches the age of ~~twenty-one~~, when he is, at the discretion of the trustee, to receive sufficient income from the share for his support. As he reaches the ages of twenty-five and thirty, respectively, he is thereafter to receive specified percentages of the income from his share.

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The provisions for the sons and the daughter are substantially the same except that the daughter is to receive certain minimum dollar amounts upon her marriage and additional amounts if she has children. Invasion of the principal of her share is permitted to provide the minimum amounts. In the event a son marries before he is twenty-five, he is then, but not before attaining the age of 23, to receive the **percentage** of the income which he would otherwise receive when he is twenty-five.

In the case of a beneficiary's death the income from his share is to be paid to his children, if any, for two years, and then the 'principal of his share is to be added to the shares of the surviving beneficiaries. The trust is not to terminate until one of the beneficiaries reaches the age of forty or all of the **beneficiaries** die. Upon termination, the balance of the share of each survivor is to be distributed to him, If there are no survivors, the shares are to go to certain brothers and sisters of the trustors.

The instrument contains a provision that children born to the trustors within one year after the trust instrument was executed were to be added as beneficiaries on an equal basis with the initial beneficiaries. In that event, the trust estate was to be divided into four or more shares, rather than three.

Throughout the instrument the trustors refer to that which they created as a single "**trust**" rather than as separate "**trusts**."

Appellant filed four separate California income tax returns for the years in question on the theory that the trust agreement created four separate trusts. Pursuant to a determination-by Respondent that only one trust was created by the document, Appellant paid the additional tax involved. Hence, the question before us is whether one or four trusts were created.

It is generally held that where the trustor refers to his creation as a single "**trust**" rather than as several "**trusts**" there must be a clear showing to support a finding that he actually created more than one trust (Hale v. Dominion National Bank, 186 Fed. 2d 374, cert. den. 342 U.S. 821; Huntington National Bank v. Commissioner, 90 Fed. 2d 876; Fort Worth National Bank v. U.S., 137 Fed. Supp. 71; Edward M. and Fred C. Hiecke Trust, 6 T. C. 30).

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Appellant call's attention to the provision of the trust instrument directing the trustee to divide the trust estate into equal shares for accounting purposes. A provision calling for separation of shares merely for accounting purposes, however, does not demonstrate that separate trusts are created (Hale v. Dominion National Bank, supra, Schall v. U.S., U.S.D.C., Minn., Mo. 5364, July 31, 1957).

Appellant also refers to the case of McHarg v. Fitzpatrick, 210 Fed. 2d 792, which held that separate trusts were created where "Each 'share' during the whole period of its existence in trust was as completely isolated from all the other 'shares' in composition, in beneficiary, and in duration, as though they had all been set up by separate deeds." Kore parallel with the facts here is Fort Worth National Bank v. U.S., 137 Fed. Supp. 71, which distinguished the McHarg case from a situation where a surviving beneficiary could receive in trust a part of the share of any beneficiary who predeceased him. The same distinction applies to the case before us. The McHarg case is further distinguished by the fact that here a portion of the share of each of the initial beneficiaries could be and was taken to provide a share for a beneficiary who was added at a later date. In the instant matter, moreover, the trust as to all of the shares is to terminate with the same event. It is evident that the shares here are not at all isolated in composition, in beneficiary or in duration.

The conclusion is inescapable that the construction of the limitations in the trust instrument fails to rebut the expressed intention of the trustors to create one trust.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the

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action of the Franchise Tax Board on the claims of Citizens National Trust and Savings Bank of Los Angeles, Trustee for Horace Heidt, for refund of personal income tax in the amounts of \$189.77, \$534.09, \$457.14 and \$27.91 for the years ended August 31, 1950, 1951, 1952 and 1953, **re-**spectively, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of December, 1959, by the State Board of Equalization.

Paul R. Leake, Chairman

George R. Reilly, Member

John W. Lynch, Member

Richard Mevins, Member

 , Member

ATTEST: Dixwell L. Pierce, Secretary